

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814

September 6, 1996

ALL-COUNTY INFORMATION NOTICE I-47-96

TO: ALL COUNTY WELFARE DIRECTORS
ALL PUBLIC AND PRIVATE ADOPTION
AGENCIES
ALL CDSS ADOPTION DISTRICT OFFICES

REASON FOR THIS TRANSMITTAL

- ☐ State Law Change
- ☐ Federal Law or Regulation Change
- ☒ Court Order or Settlement Agreement
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

SUBJECT: INTERRELATIONSHIP BETWEEN ADOPTION ASSISTANCE PROGRAM (AAP) AND
SUPPLEMENTAL SECURITY INCOME PROGRAM (SSI) BENEFITS

REFERENCE: ACIN I-37-88

This All-County Information Notice (ACIN) is issued as part of the settlement agreement negotiated in Peterson v. Anderson (Alameda County Superior Court Case No. 739018-2). This lawsuit dealt with the determination of the correct AAP payment amount in cases where the child is also receiving SSI benefits. As part of the settlement, the California Department of Social Services agreed to issue this ACIN which illustrates how current regulations apply in calculating AAP benefits, particularly with respect to the receipt of SSI income.

Determination of AAP benefits is regulated by Title 22 California Code of Regulations Section 35333. In brief, this regulation establishes a three-step benefit determination process:

Step 1: The agency, in consultation with the family, determines the needs of the child which cannot be met by existing family or community resources and which AAP may be able to meet. See Section 35333(a).

Step 2: The agency determines what the payment of foster care funds for the child's care would have been if the child had remained in foster care. This is the maximum AAP payment amount. See Section 35333(b). The three parts of this second step are:

Part 1. The agency determines what the state-approved foster care rate for the child would be. For a child who is living in the adoptive home and who is not a regional center client, this amount is the basic foster family home rate plus any applicable specialized care increment. For a child who is a regional center client living in the adoptive home, this amount is the owner-operated facility rate at the regional center determined service level. See Section 35333(b)(1). Section 35333(b)(1) also defines how the

state-approved rate is determined for a child placed outside of the adoptive home.

Part 2: The agency determines the amount of income received by or on behalf of the child. Only income which the child would have been eligible to receive if the child had not been placed for adoption is included. Examples of such income are SSI benefits, Social Security benefits based on the earnings of a birth parent, and income from trust funds based on the assets of a birth parent or a birth parent's relatives. In contrast, income such as Social Security benefits and benefits from trust funds that are based on the earnings or assets of the adoptive parents are not included as the child is receiving these benefits because she or he has been adopted. See Section 35333(b)(2).

Part 3: The agency determines the maximum allowable AAP payment amount by subtracting the income identified in Part 2 from the rate identified in Part 1. See Section 35333(b)(3).

Step 3: Finally, through negotiation with the family, the actual AAP payment amount is determined. The payment may be no greater than either the amount determined in Step 1 or the amount determined in Step 2, whichever is less. The actual payment may be less than the assessed need level in order to not exceed the *maximum* allowable payment.

Thus, any SSI benefit a child receives reduces the *maximum* allowable AAP payment the family could receive by the amount of the SSI benefit. In short, if the child is living with the adoptive family and if his or her only income other than AAP is from SSI, the AAP payment cannot exceed the appropriate family home rate less the amount of the SSI benefit.

However, it is important to understand that the receipt of SSI (or other income as described above) only reduces the *maximum* possible AAP payment. The actual AAP payment is only reduced by the amount that it would exceed the *maximum* allowable AAP payment which would result if a reduction did not occur.

The following two case examples are provided to clarify the preceding explanation. In both cases, the child is a disabled child receiving non-federal AAP. If the child would be in foster care with a foster family, the child would be eligible for a special care increment of \$300 in addition to the basic foster care rate of \$345. Thus, the total foster care rate would be \$645 per month. The actual foster care payment (i.e., the maximum allowable AAP payment) would be the difference between the \$645 rate and any income received by or on behalf of the child. In both cases, the child begins receiving an SSI grant of \$325 per month. Thus, the foster care payment that the child would have received (i.e., the difference between the rate of \$645 and the SSI income (\$325)) is \$320 per month.

Case 1: The child's AAP payment, based on the child's needs and the family's circumstances, is \$300 per month. This payment is intended to assist the family in meeting the child's special care needs. Because the AAP grant is

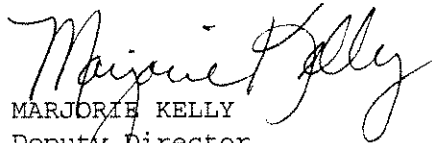
less than the foster care payment that would have been made (\$320), the AAP grant may not be reduced without the family's concurrence.

Case 2: The child's AAP payment is \$645 per month to meet both basic and special care needs. Upon the child's receipt of SSI (\$325), the AAP grant (\$645) is greater than the foster care payment (\$320) that would have been made. Hence, the AAP grant must be reduced to a level no greater than the foster care payment, i.e., to \$320 per month.

The preceding discussion applies to both federal and non-federal (state only) AAP cases. In federal AAP cases, there is an added complication. The Social Security Administration will reduce the SSI payment by the amount of the AAP payment. Because most AAP cases of children who are also eligible for SSI are federal AAP cases, this effectively means that adoptive families will need to choose between receiving AAP and receiving SSI.

Finally, families need to be aware of the fact that the concurrent receipt of AAP and SSI benefits, especially when one program is not aware that the family is receiving benefits from the other program, may result in overpayments and thus the obligation to repay these overpayments. County welfare departments can be expected to notify the Social Security Administration of the amount of AAP payments made on behalf of children also receiving SSI.

If you have any question regarding this issue, please contact Joseph Magruder, Adoptions Policy Consultant at (916) 323-0524 (Calnet 473-0524).



MARJORIE KELLY
Deputy Director
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c: CWDA